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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,787	09/04/2001	Dietmar Huglin	HP/2-21867	3542
334	7590	03/17/2010		
Ciba Corporation Patent Department 540 White Plains Road P.O. Box 2005 Tarrytown, NY 10591			EXAMINER CHANNAVAJALA, LAKSHMI SARADA	
			ART UNIT	PAPER NUMBER
			1611	
			NOTIFICATION DATE	DELIVERY MODE
			03/17/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

09/830,787

Applicant(s)

HUGLIN ET AL.

Examiner

Lakshmi S. Channavajjala

Art Unit

1611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33, 35, 36, 42, 43, 47 and 48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33, 35, 36, 42, 43, 47 and 48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/C.3)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Receipt of amendment and response dated 12-8-09 is acknowledged.

Claims 33, 35, 36, 42, 43 and 47-48 are pending in the instant application.

1. In light of the amendments to limit the claims to body oil, body lotion or a body gel, the following rejection of record has been withdrawn:

Claims 33, 35, 36, 42, 43, 47-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,643,985 to Hoffmann et al (Hoffmann) in view of US 5,242,689 to Yoshihara et al and US 6042839 to Lahanas et al (Lahanas)

Claims 33, 35 and 47-48 are rejected under 35 U.S.C. 103(a) as being unpatentable US 5,723,435 to Severns et al (Severns) in view of US 5,719,129 to Andary et al (Andary).

However, the following new rejection has been applied to the pending claims:

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 33, 35, 36, 42, 43, 47-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,643,985 to Hoffmann et al (Hoffmann) in view of US 5,756,082 to Cashin et al (Cashin) and US 6042839 to Lahanas et al (Lahanas) OR Cashin and Hoffmann in view of Lahanas.

Hoffmann teaches stabilization and prevention of oxidation of plastic materials of household or industrial type by the addition of phenolic antioxidants (col.1). The compounds (benzenepropanoic acid 3-(1,1-dimethylethyl)-4-hydroxy)-5-methyl-1,2-ethandiylbis(oxy-2,1-ethandiyl)ester & benzenepropanoic acid 3,5-bis-(1,1-dimethylethyl)-4-hydroxy)-1,6-hexanedylester) described in col. 6 of the Hoffmann meet the claimed compounds with the conditions of "e=2, Q= ethylene, v is O (for claims 33, 35, 36, 42-43). Hoffmann teaches mixtures of the compounds (see col. 3). Hoffmann teaches the stabilizing compounds for recycled plastic materials (domestic as well as industrial- see col. 12 for lubricants, antistatic agents, pigments) and not body-care products, instant claims recite "body-care products". While instant claims recite the amounts in ppm, Hoffmann teaches 0.01- 10%. However, Hoffmann teaches the antioxidants for stabilizing recycled plastic materials that mainly comprise of polymers such as polystyrene, polyolefin etc (col. 1, L 18-25).

Cashin teaches cosmetic stick compositions in the form of gel comprising a volatile silicone, solidifying agent and a gel network made of hydrocarbon oil contained in a polymeric network (abstract, col. 1, L 30-39). The polymeric materials of the network comprise ethylene/propylene/styrene copolymers (claim 2). Additionally, Cashing suggest that he composition contains particulate materials such as polystyrene, polypropylene, polyethylene particles (examples and col. 3, L 30-45). Cashin does not teach incorporating the antioxidants in the compositions. The composition of Cashin in the form of a gel reads on instant body gel.

Lahanas teach cosmetic compositions with water soluble gum and clay crosslinked with metal cation. Lahanas teaches that examples of cosmetic powders include polystyrene, kaolin etc (col. 1, 18-21; col. 2, L 66-67) and usually undergo oxidation with other materials such as biological materials that renders them unfavorable in cosmetic compositions. Lahanas teaches including the conventional cosmetic materials such as claimed in the instant application (col. 3). The preparation of the cosmetic compositions in Lahanas include solubilizing or suspending in water or aqueous and alcohol (col. 3, L 60-68 and examples).

It would have been obvious for one of an ordinary skill in the art at the time of the instant invention was made to employ the antioxidant phenolic compounds of Hoffmann, in appropriate amounts, to stabilize cosmetic compositions containing polymeric materials such as polyethylene, polypropylene, polyvinyl chloride of Cashin because Hoffmann suggests that the antioxidant compounds are effective in stabilizing the polymeric materials of plastic against thermoxidative degradation and both Cashin and Lahanas include polystyrene materials as cosmetic powders or cosmetic gels compositions. A skilled artisan would have expected a stable cosmetic a gel composition due to the presence of the antioxidants of Hoffmann. Further, including the antioxidants in the form of aqueous solutions or suspensions or oil soluble components depending on the other constituents of the compositions would have been within the scope of a skilled artisan so as to achieve the desired antioxidant effect upon solubilizing or suspending. Accordingly, a skilled artisan would be motivated to include the antioxidant of Hoffmann in a phase (aqueous or alcoholic or oil) in which the

polystyrene pigments of Lahanas are present so as to achieve the desired antioxidant effect.

3. Claims 33, 35 and 47-48 are rejected under 35 U.S.C. 103(a) as being unpatentable US 5,723,435 to Severns et al (Severns) in view of US 5,756,082 to Cashin et al (Cashin) and US 5,719,129 to Andary et al (Andary) or Severns in view of Andary.

Severns states that the above antioxidant compounds demonstrate light stability and generally protect dyes from degradation by first preventing generation of singlet oxygen and peroxy radicals, thereafter terminating the degradation pathway (col. 4, L 43-53). In addition to the fabric care compounds such as fabric softeners, Severns also teaches incorporating sunscreen agents such as those described in col. 11 in the compositions containing above antioxidants (the examples include Tinuvin 328, which is UV absorbing compound). All of the examples of Severns teach preparing the compositions with water and hence reads instant aqueous phase. Severns does not teach body care compositions.

Andary teaches caffeic acid derivatives in cosmetic and dermatological compositions for effective antioxidant effect and anti-inflammatory effect. Andary teaches that exposing to UV radiation; oxygen reduction is incomplete and results in the formation of free radicals that deteriorates phospholipids in cell membranes, resulting in various conditions such as aging, carcinogenesis etc (col. 3, L 25-36). Andary suggests

incorporating a caffeic acid derivative, oraposide, for trapping free radicals, and providing protection from UV A and UVB radiation (col. 3, 1-17). The example formulation in col. 10 of Andary shows that the antioxidant is added in aqueous phase. In light of the amendment, it is noted that Andary teaches gel compositions (example 7), which reads on instant gel.

Cashin teaches cosmetic stick compositions in the form of gel comprising a volatile silicone, solidifying agent and a gel network made of hydrocarbon oil contained in a polymeric network (abstract, col. 1, L 30-39). The polymeric materials of the network comprise ethylene/propylene/styrene copolymers (claim 2). Additionally, Cashing suggest that he composition contains particulate materials such as polystyrene, polypropylene, polyethylene particles (examples and col. 3, L 30-45). Cashin does not teach incorporating the antioxidants in the compositions. The composition of Cashin in the form of a gel reads on instant body gel.

Accordingly, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention was made to employ the antioxidant phenolic compounds of Severns for their antioxidant activity not only in fabric softening compositions but also in cosmetic or pharmaceutical skin care composition such as Andary or the gel composition of Cashin because Andaray suggests antioxidant compounds provide free radical inhibition and protect from ultraviolet radiation in sunlight (sunscreen) compositions. A skilled artisan would have expected the antioxidant compounds of Severns that also posses light stability to protect the skin from deterioration of phospholipids in cell membranes and thus inhibit various

conditions such as aging, carcinogenesis etc., in the compositions containing polystyrene or polypropylene of Cashin. Further, employing the antioxidants compounds of Severns in an appropriate phase i.e., water or oil phase as appropriate depending on the desired solubility of the antioxidant would have been within the scope of a skilled artisan.

Response to Arguments

Applicant's arguments filed 4-9-09 have been fully considered but they are not persuasive in light of the new rejections.

Applicants state that the present claims are now aimed at body oils, body lotions and body gels. The limitations of the present claims cannot be met with this combination of references i.e., Hoffmann, Yoshihara and Lahanas. However, instant new rejection now includes the teachings of Cashin for teaching cosmetic gels and therefore, the argument is not persuasive. Further, the teachings of Hoffmann that the phenolic antioxidants may be used to stabilize plastic materials, which are also commonly used in body care products (Yoshihara), would lead one skilled in the art to employ such antioxidants in other compositions containing the thermoplastic materials, including body care products of Yoshihara with a reasonable expectation to stabilize the thermoplastic materials of Yoshihara. Further, the teachings of Lahanas that shows incorporating polystyrene powders materials in cosmetic compositions, particularly in appropriate cosmetic phases. Accordingly, a skilled artisan would be motivated to include the antioxidant of Hoffmann in a phase (aqueous or alcoholic or oil) in which the

polystyrene pigments of Lahanas or as gel compositions of Cashin, so as to achieve the desired antioxidant effect.

Applicants argue that Severns teachings overlap with instant antioxidants but neither Severns nor Andary teach claimed body oils, body lotion or a body gel. However, it is clear from the disclosure of Andary that sunscreen compositions can exist as gels. Alternatively, the new reference of Cashin teaches cosmetic compositions in the form of gels. Thus, a skilled artisan would have reasonably expected that the phenolic compounds of Severns to exhibit their antioxidant activity not only in fabric softening compositions but also in cosmetic or pharmaceutical skin care composition such as Andaray, which commonly exist in the form of gels (Andary or Cashin) because Andaray suggests antioxidant compounds provide free radical inhibition and protect from ultraviolet radiation in sunlight (sunscreen). Andary also teaches preparing the antioxidant materials in aqueous phase (examples).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 9.00 AM -5.30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila G. Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lakshmi S Channavajjala/
Primary Examiner, Art Unit 1611
March 4, 2010